

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

THE GROSSE POINTE LAW FIRM, P.C.  
a/k/a LAW OFFICE OF ALAN BROAD, P.C.,

Plaintiff,

vs.

Case No. 2012-5249-CK

JAGUAR LAND ROVER NORTH AMERICA, LLC,  
ROVER MOTORS OF FARMINGTON HILLS,  
LLC d/b/a LAND ROVER FARMINGTON HILLS,  
AND JAGUAR AND LAND ROVER OF MACOMB,  
LLC d/b/a JAGUAR LAND ROVER OF LAKESIDE  
AND ELDER AUTOMOTIVE GROUP,

Defendants.

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OPINION AND ORDER

Plaintiff has filed a motion for reconsideration of the Court's November 10, 2014 Opinion and Order and November 10, 2014 Order, which together granted Defendants' summary disposition of Plaintiff's claims.

In addition, Defendants have filed a motion for case evaluation sanctions pursuant to MCR 2.403(O). Plaintiff has filed a response and requests that the motion be denied. Defendants have also filed a reply brief in support of their motion.

In the interests of judicial economy the factual and procedural statements set forth in the Court's November 10, 2014 Opinion and Order are herein incorporated.

(1) Plaintiff's Motion for Reconsideration

Motions for reconsideration must be filed within 21 days of the challenged decision. MCR 2.119(F)(1). In this case, the Opinion and Order and the Order at issue were entered on November 10, 2014. However, Plaintiff's instant motion was not filed until December 5, 2014,

25 days after the decision in question were entered. Consequently, Plaintiff's motion is untimely and is denied on that basis.

(2) Defendant's Motion for Case Evaluation Sanctions

Defendants, as the prevailing parties, are generally entitled to costs and case evaluation sanctions pursuant to MCR 2.403(O), which provides:

(O) Rejecting Party's Liability for Costs.

- (1) If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation. However, if the opposing party has also rejected the evaluation, a party is entitled to costs only if the verdict is more favorable to that party than the case evaluation.

In this case, following the case evaluation hearing on August 12, 2013, Defendants accepted the case evaluation award, but Plaintiff rejected it. As all parties are aware, Defendants prevailed in this action when the Court granted them summary disposition of Plaintiff's claims. Nevertheless, Plaintiff contends that case evaluation sanctions are inappropriate in this matter under the "interests of justice" exception provided by MCR 2.403(O)(11).

The interest of justice exception may apply "where a legal issue of first impression is presented," or "where the law is unsettled and substantial damages are at issue, where a party is indigent and an issue merits decision by a trier of fact, or where the effect on third persons may be significant." *Haliw v Sterling Heights (On Remand)*, 266 Mich App 444, 448, 702 NW2d 637 (internal quotations and citations omitted). In this case, Defendants were granted summary disposition of Plaintiff's breach of warranty (Count VI), lemon law (Count VIII) and Magnuson-Moss Act (Count IX) on statute of limitation grounds. However, the Court recognizes that the Michigan Court of Appeals and/or Michigan Supreme Court have not addressed whether Michigan law permits a separate cause of action for failing to repair defects, which was one of

the types of claims advanced by Plaintiff in this case. Further, if that type of action is permitted, the Court of Appeals and/or Supreme Court have yet to determine whether the statute of limitations for such claims restarts each time another failed attempt is made. Accordingly, those issues are matter of first impression, and the Court is convinced that the issues are the type of matter that's resolution is in the public's best interest. Consequently, the Court is convinced that Defendant's motion for case evaluation is properly denied under the public interest exception provided by MCR 2.403(O)(11).

*Conclusion*

For the reasons set forth above, Plaintiff's motion for reconsideration is DENIED. In addition, Defendants' motion for case evaluation sanctions is DENIED. Pursuant to MCR 2.602(A)(3), the Court states this matter remains CLOSED.

IT IS SO ORDERED.

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/s/ John C. Foster  
JOHN C. FOSTER, Circuit Judge

Dated: January 8, 2015

JCF/sr

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